

section 6059 and § 301.6059-1 within the time prescribed, the plan administrator shall pay a penalty of \$1,000. A failure to provide a material item of information called for in the actuarial report is considered a failure to file the report. For this purpose, the signature of an enrolled actuary (see § 301.6059-1(d)) is considered a material item of information.

Further, for any report filed for a plan year ending after January 25, 1982, if the actuary seeks to materially qualify a statement required by § 301.6059-1(c) (4) or (5) there is a failure to provide a material item of information called for in the report. For rules relating to statements not considered as materially qualifying the required statements, see § 301.6059-1(d).

(b) *Failure to make actuarial valuation.* Section 412(c)(9) and the regulations thereunder prescribe the time for making an actuarial valuation of a defined benefit plan. For purposes of this section, the failure to base information called for in the actuarial report upon an actuarial valuation of the plan which is made within the time prescribed by section 412(c)(9) and the regulations thereunder is considered a failure to file the actuarial report.

(c) *Showing of reasonable cause.* The penalty imposed by this section does not apply if it is established to the satisfaction of the appropriate district director or the director of the Internal Revenue Service Center at which the actuarial report is required to be filed that the failure to file the report was due to reasonable cause. An affirmative showing of reasonable cause must be made in the form of a written statement setting forth all the facts alleged as reasonable cause. The statement must contain a declaration by the appropriate individual that the statement is made under the penalties of perjury.

(d) *Joint liability.* If more than one person is responsible as a plan administrator for a failure to file the actuarial report, all such persons are jointly and severally liable with respect to the failure.

(e) *Manner of payment.* The penalty imposed for the failure to file an actuarial report shall be paid in the same

manner as a tax upon the issuance of notice and demand therefor.

(f) *Effective dates.* In the case of a plan in existence on January 1, 1974, this section is effective beginning with the first plan year beginning after December 31, 1975, for which the minimum funding standards of section 412 apply to the plan. In the case of a plan not in existence on January 1, 1974, this section is effective beginning with the first plan year beginning after September 2, 1974, for which the minimum funding standards apply to the plan.

(Secs. 6059 and 7805 of the Internal Revenue Code of 1954 (88 Stat. 947, 68A Stat. 917; 26 U.S.C. 6059, 7805))

[T.D. 7798, 46 FR 57484, Nov. 24, 1981]

§ 301.6693-1 Penalty for failure to provide reports and documents concerning individual retirement accounts or annuities.

(a) *In general*—(1) *Annual reports, etc.* The trustee of an individual retirement account described in section 408(a), or the issuer of an individual retirement annuity described in section 408(b), who fails to furnish or file a report or any other document required under section 408(i) and § 1.408-5 within the time and in the manner prescribed for furnishing or filing such item shall pay a penalty of \$10 for each failure unless it is shown that such failure is due to reasonable cause.

(2) *Disclosure statements.* The trustee of an individual retirement account described in section 408(a), or the issuer of an individual retirement annuity described in section 408(b), who fails to furnish or file a disclosure statement, a governing instrument, an amendment to either, or any other document required under section 408(i) and § 1.408-6, within the time and in the manner prescribed for furnishing or filing such item, shall pay a penalty of \$10 for each failure unless it is shown that such failure is due to reasonable cause.

(b) *Showing of reasonable cause.* The penalty imposed by section 6693 shall not apply to any person with respect to a failure to furnish or file a report, statement, or other document within the time and in the manner prescribed if it is established to the satisfaction of the district director that such failure

was due to reasonable cause. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration by such person that it is made under the penalties of perjury and setting forth all the facts alleged to constitute reasonable cause.

(c) *Deficiency procedures not to apply.* The penalty imposed by section 6693 may be assessed and collected without regard to the deficiency procedures provided by subchapter B of chapter 63 of the Code.

(d) *Other penalties.* The penalties of section 6693 and this section are in lieu of any penalty imposed by section 6652(f) for violation of section 6047(d), with respect to any failure to furnish or file described in this section.

(e) *Effective date.* This section shall take effect on January 1, 1975.

[T.D. 7730, 45 FR 72652, Nov. 3, 1980]

§ 301.6707-1T Questions and answers relating to penalties for failure to furnish information regarding tax shelters.

The following questions and answers relate to the penalties imposed by section 6707 of the Internal Revenue Code of 1954, as added by section 141(b) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 681), for failure to furnish information regarding tax shelters.

PENALTIES FOR FAILURE TO REGISTER AND FOR PROVIDING FALSE OR INCOMPLETE INFORMATION

Q-1. What are the consequences if a person required to register a tax shelter ("tax shelter organizer") fails to register the shelter timely?

A-1. Generally, a penalty will be imposed. The penalty for failure to register timely is the greater of (i) \$500 or (ii) 1 percent of the aggregate amount invested in the tax shelter, not to exceed \$10,000. The \$10,000 limitation does not apply, however, if the tax shelter organizer intentionally disregards the registration requirements. For purposes of this penalty, the aggregate amount invested in the tax shelter is computed in the manner prescribed in A-21 of § 301.6111-1T, except that the amount to be received from the sale of an interest is taken into account to determine the amount of the penalty

only if the interest is sold to an investor. No penalty will be imposed on a person for failure to register a tax shelter if the failure is due to reasonable cause. See A-4 through A-6 of this section for rules relating to reasonable cause.

Q-2. Will registration of a tax shelter by a person participating in the management ("manager") or a person participating in the sale ("seller") of a tax shelter after the date that interests in the tax shelter were first offered for sale relieve a person principally responsible for organizing the tax shelter ("principal organizer") or a person who participated in the organization of the tax shelter of liability for failure to register?

A-2. No. A principal organizer of a tax shelter and a person who participates in the organization of a tax shelter are subject to penalty if they fail to register a tax shelter by the day interests in the tax shelter are first offered for sale, regardless of whether a seller or manager subsequently registers the tax shelter.

Q-3. Does registration of a tax shelter by a seller or manager relieve other sellers or managers who are required to register the tax shelter from liability for failure to register?

A-3. No. Sellers and managers who are required to register a tax shelter and fail to do so are subject to the penalty unless their failure to register is due to reasonable cause. A seller or manager, however, is not required to register a tax shelter once the seller or manager knows the tax shelter has been registered. See A-6 of this section for rules relating to reasonable cause for failure to register in the case of a seller.

Q-4. What constitutes reasonable cause for failure to register a tax shelter?

A-4. In general, the determination of whether reasonable cause exists for failure to register a tax shelter is a question of fact. In determining whether reasonable cause exists, all representations known to the tax shelter organizer (or for which there is reason for the tax shelter organizer to have known) must be taken into account. A tax shelter organizer (other than a seller) ordinarily will be deemed to know